

IN THE MATTER OF
REX PRODUCTS CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4695. Complaint, Feb. 4, 1942—Decision, Apr. 26, 1946

"Cloisonne," or "cloisonne enameling" has long been known as a method or manner of creating an artistic design on a metal base under a process by which flat metal strips or ribbons of metal, usually gold, silver, or copper, are attached (usually by soldering) to the metal base, forming cells and outlining a decorative design; the cells thus formed are filled with an inorganic, vitreous, opaque enamel, usually different colors in different cells; and the surface, after application of sufficient heat to fuse the enamel on to the metal, is ground and polished, so as to expose the cloisons and outline the design used.

Most of the genuine cloisonne jewelry and other articles of that type are made in and imported from China and Japan, and are more expensive and desirable than ordinary enameled products, and while the purchasing public is not informed as to the exact method of construction and the material used in the manufacture of genuine cloisonne articles, there is a general understanding and knowledge of the value, desirability, and superior qualities of such products and a widespread demand therefor.

Where a corporation engaged in the manufacture and interstate sale and distribution of toilet compacts constructed of metal, of which certain portions were covered with enamel and plastics—

(a) Represented through use of the descriptive words, "Cloisonne top," "Cloisonne enamel," and similar words in its catalogs and circulars and in advertisements in newspapers and other publications, that its products were genuine cloisonne, manufactured in all respects in accordance with the long-established process;

The facts being they were not "cloisonne" and not similar in design or construction to such products; and in many instances they were not even enameled but were covered by a colored plastic substance which gave them a glossy enameled appearance;

(b) Made confusing use of words "cloisonne effect" and "cloisonne colors" to designate or describe its said compacts, indicating thereby that they had been made in accordance with the method use in the manufacture of genuine cloisonne, which has, in fact, no characteristic color or colors, but is usually manufactured with different colors in different cells;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true and of thereby causing it to purchase substantial quantities of its products; and of placing in the hands of retail dealers a means whereby they might also mislead purchasers;

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. S. F. Rose for the Commission.

James & Franklin, of New York City, for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Rex Products Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof, would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows.

PARAGRAPH 1. The respondent, Rex Products Corp., is a corporation organized and existing by virtue of the laws of the State of New York, with its principal office and place of business at 111 Cedar Street, New Rochelle, N. Y. Respondent is now and has been, for more than 2 years last past, engaged in the manufacture and sale of toilet compacts, constructed of metal, certain portions thereof being covered with enamel and plastics. Respondent causes said product, when sold, to be transported from its place of business, in the State of New York, to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein, has maintained a course of trade in said product in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its toilet compacts, respondent has made many false, misleading and deceptive statements and representations with respect to its said product by means of catalogs and circulars distributed generally to the purchasing public and by insertion of advertisements in newspapers and other publications wherein its products are repeatedly designated and described as "cloisonne." Among and typical of such statements and representations are the following:

No. 2984. Cloisonne top. To retail profitably at \$1.25 each.

Compacts 39¢ * * * Damascene, cloisonne enamel, tapestry and alligator calf covers.

No. 2598. Cloisonne effect top. Mirror back. Cloisonne colors.

No. 2602. Cloisonne effect top. Assorted cloisonne colors.

No. 2537. Cloisonne effect top and back.

No. 7001. Cloisonne effect. Assorted cloisonne colors.

No. 3301. Cloisonne effect top. Assorted cloisonne colors. \$7.50 per dozen.

No. 4818. Cloisonne effect top. Enameled rims. Assorted cloisonne colors.

No. 402. Cloisonne effect in assorted colors.

PAR. 3. Through the use of the descriptive words "Cloisonne top,"

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"Cloisonne enamel," "Cloisonne effect top," "Assorted cloisonne colors," "Cloisonne effect in assorted colors" and similar words, the respondent represents and has represented that its products are genuine cloisonne products manufactured in all respects in accordance with the long established process,

PAR. 4. The above and foregoing descriptive terms and designations as used by respondent are false, misleading, and deceptive. "Cloisonne" is a French word meaning chambered, and is related to the French word "cloison," meaning partition. The words "cloisonne," or "cloisonne enameling" have long been known as a method or manner of creating an artistic design on a metal base in the following manner: Flat metal strips or ribbons of metal are attached (usually by soldering) to the metal base, forming cells and outlining a decorative design. These cells formed by the partitions are filled with an inorganic, vitreous opaque enamel, usually different colors in different cells. Sufficient heat is applied to fuse the enamel onto the metal. The surface is then ground and polished, exposing the cloisons and outlining the design used. The metal generally used for the cloisons is gold, silver or copper. Most of the jewelry and other articles of this type are made in and imported from China and Japan, and are more expensive and desirable than ordinary enameled products.

PAR. 5. The toilet compacts manufactured, advertised and sold by the respondent and described as aforesaid are not "cloisonne" products and are not even similar in design or construction to "cloisonne" or "cloisonne enamel" products. In many instances the compacts made and sold by the respondent are not even enameled but are covered by a colored plastic substance which gives a glossy enameled appearance to the product. Even when the metal case of respondent's products are covered with enamel, there is no attempt to use flat strips of metal or flattened wires to outline the design. The enamel used by respondent is in no manner comparable to the vitreous inorganic, opaque enamel produced in genuine cloisonne work. Respondent's compacts are not "cloisonne effects," "assorted cloisonne colors," or "cloisonne colors" since they are not manufactured in any particular in accordance with the accepted and well-known standard, as above described.

PAR. 6. While the purchasing public is not informed as to the exact method of construction and the material used in the manufacture of genuine cloisonne articles, there is a general understanding and knowledge among the purchasing public of the value, desirability and superior qualities of such products and a widespread demand therefor.

PAR. 7. In the manner and by the means aforesaid, respondent places

in the hands of retail dealers of its products a means and instrumentality whereby such dealers may mislead and deceive purchasers with respect to the character and quality of its products.

PAR. 8. The use by respondent of the foregoing false, misleading, and deceptive designations, statements and representations, has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such designations, statements, and representations are true and causes a substantial portion of the purchasing public because of such mistaken and erroneous belief, to purchase substantial quantities of respondent's products.

PAR. 9. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 4, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Rex Products Corp., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the answer of the respondent thereto a stipulation as to the facts was entered into upon the record, subject to the approval of the Commission, whereby it was stipulated that the statement of facts set out in the record might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto and that the Commission might proceed upon said complaint (the answer of the respondent) and said statement of facts to make its report stating its findings as to the facts (including inferences which might be drawn from said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without any intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, and stipulation, said stipulation having been approved, accepted, and filed by the Commission; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

Findings

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Rex Products Corp., is a corporation organized and existing by virtue of the laws of the State of New York, with its principal office and place of business at 111 Cedar Street, New Rochelle, N. Y. Respondent is now, and has been for more than 2 years last past, engaged in the manufacture and sale of toilet compacts constructed of metal, certain portions thereof being covered with enamel and plastics. Respondent causes said product, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its toilet compacts, respondent has made many false, misleading, and deceptive statements and representations with respect to its said product by means of catalogs and circulars distributed generally to the purchasing public and by insertion of advertisements in newspapers and other publications wherein its products are repeatedly designated and described as "cloisonne." Among and typical of such statements and representations are the following:

- No. 2984. Cloisonne top. To retail profitably at \$1.25 each.
- Compacts 39¢ * ~ * Damascene, cloisonne enamel, tapestry and alligator calf covers.
- No. 2598. Cloisonne effect top. Mirror back. Cloisonne colors.
- No. 2602. Cloisonne effect top. Assorted cloisonne colors.
- No. 2537. Cloisonne effect top and back.
- No. 7001. Cloisonne effect. Assorted cloisonne colors.
- No. 3301. Cloisonne effect top. Assorted cloisonne colors. \$7.50 per dozen.
- No. 4818. Cloisonne effect top. Enameled rims. Assorted cloisonne colors.
- No. 402. Cloisonne effect in assorted colors.

PAR. 3. Through the use of the descriptive words "Cloisonne top," "Cloisonne enamel," and similar words, the respondent represents and has represented that its products are genuine cloisonne products manufactured in all respects in accordance with the long-established process.

PAR. 4. The above and foregoing descriptive terms and designations as used by respondent are false, misleading, and deceptive. "Cloisonne" is a French word meaning "chambered," and is related to the French word "cloison," meaning "partition." The word "cloisonne," or "cloisonne enameling" have long been known as a

method or manner of creating an artistic design on a metal base in the following manner: Flat metal strips or ribbons of metal are attached (usually by soldering) to the metal base, forming cells and outlining a decorative design. These cells formed by the partitions are filled with an inorganic, vitreous, opaque enamel, usually different colors in different cells. Sufficient heat is applied to fuse the enamel onto the metal. The surface is then ground and polished, exposing the cloisons and outlining the design used. The metal generally used for the cloisons is gold, silver, or copper. Most of the jewelry and other articles of this type are made in and imported from China and Japan, and are more expensive and desirable than ordinary enameled products.

PAR. 5. The toilet compacts manufactured, advertised, and sold by the respondent and described as aforesaid are not "cloisonne" products and not even similar in design or construction to "cloisonne" or "cloisonne enamel" products. In many instances the compacts made and sold by the respondent are not even enameled but are covered by a colored plastic substance which gives a glossy enameled appearance to the product. Even when the metal case of respondent's products are covered with enamel, there is no attempt to use flat strips of metal or flattened wires to outline the design. The enamel used by respondent is in no manner comparable to the vitreous, inorganic, opaque enamel produced in genuine cloisonne work. Respondent's products are not manufactured in any particular in accordance with the accepted and well-known standard, as above described.

PAR. 6. While the purchasing public is not informed as to the exact method of construction and the material used in the manufacture of genuine cloisonne articles, there is a general understanding and knowledge among the purchasing public of the value, desirability, and superior qualities of such products and a widespread demand therefor.

PAR. 7. After consideration of the use of the term "cloisonne effect" to designate or describe respondent's compacts and the public understanding with reference to genuine cloisonne, the Commission is of the opinion, and so finds, that such use of the term "cloisonne effect" has the tendency and capacity to mislead and deceive the purchasing public into the belief that the products so designated have been manufactured in accordance with the manner or method used in the manufacture of genuine cloisonne. Since cloisonne is usually manufactured with different colors in different cells, there is no color or colors which are attributed to, or characteristic of, genuine cloisonne. The term "cloisonne colors" therefore has no meaning and tends only to confuse the purchasing public and to cause it to believe that the prod-

ucts so described have been manufactured in accordance with the manner or method used in the manufacture of genuine cloisonne.

PAR. 8. The use by respondent of the foregoing false, misleading, and deceptive designations, statements, and representations has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such designations, statements, and representations are true and causes a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase substantial quantities of respondent's products. Through the use of the descriptive terms hereinbefore described, the respondent places in the hands of retail dealers of its products a means and instrumentality whereby such dealers may mislead and deceive purchasers with respect to the character and quality of its products.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts, in which stipulation the respondent waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Rex Products Corp., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its toilet compacts in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "cloisonne" or "cloisonne enamel" or any other term of similar import or meaning to designate, describe, or refer to compacts or other articles of merchandise which are not composed of inorganic, vitreous, opaque enamel fused upon a metal base in deco-

rative designs outlined by metal strips, in the characteristic manner of artistic enamel known as "cloisonne."

2. Using the term "cloisonne effect" or "cloisonne colors" or any other term of similar import or meaning to designate or describe compacts or other articles of merchandise which are not manufactured in accordance with the manner or method used in the manufacture of genuine cloisonne.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF

BURGESS SEED & PLANT COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5406. Complaint, Nov. 27, 1945—Decision, Apr. 26, 1946

Where a corporation engaged in packaging and selling seeds, including a species of soy or soya beans which it designated as "domestic coffee berry"; by means of such statements in its catalogs and other advertising as: "COFFEE one cent per lb." with drawing of a bush under which appeared to be coffee beans, along with a steaming coffee pot; "Grow your own coffee at an expense of less than one cent per lb. The domestic coffee berry makes a delicious, nourishing drink to take the place of injurious coffee . . . gives health and strength to the young and old. * * * Thousands pronounce it better than the best coffee. * * * Prepared like any other coffee," "DOMESTIC COFFEE BERRY"—

Represented falsely, directly and by implication, that the berries produced by the plants or bushes grown from its "domestic coffee berry" were coffee and a better variety of coffee than that obtainable through regular merchandise channels; that a person drinking a beverage made with such berries would obtain the same effect as that obtained from a beverage made with coffee; and that said beverage would give health and strength to the user;

The facts being that the berries in question were a variety of soybean and were not coffee, domestic or otherwise, and a person using a beverage made from them would not obtain the same effect as from the berry produced by the coffee plant; and such beverage would not give health or strength to the user;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public—which has a marked preference for coffee over soybeans for beverage purposes—into the erroneous belief that said representations were true, and thereby cause such public to purchase substantial quantities of its said product:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Charles S. Cox for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Burgess Seed & Plant Co., a corporation, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public